

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Entravision Holdings, LLC	)	
	)	CSR-6167-M
v.	)	
	)	
EchoStar Communications Corporation	)	
	)	
Request for Mandatory Carriage of Television	)	
Station KSMS-TV, Monterey, California	)	
	)	

**MEMORADUM OPINION AND ORDER**

**Adopted: September 16, 2003**

**Released: September 24, 2003**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. Entravision Holdings, LLC (“Entravision”), licensee of television broadcast station KSMS-TV Monterey, California has filed a complaint against EchoStar Communications Corporation (“EchoStar”) pursuant to Section 338 of the Communications Act, as amended, and Section 76.66 of the Commission’s rules.<sup>1</sup> The complaint is based on EchoStar’s refusal to carry the station’s signal on its satellite system. The station alleges that EchoStar is providing “local-into-local” satellite service pursuant to the statutory copyright license in the Monterey-Salinas, California designated market area (“DMA”).<sup>2</sup> The complaint alleges that EchoStar has failed to meet its must carry obligations under the Commission’s satellite broadcast signal carriage rules.<sup>3</sup> For the reasons discussed below, we deny the complaint.

<sup>1</sup> 47 U.S.C. § 338; 47 C.F.R. § 76.66.

<sup>2</sup> See 17 U.S.C. § 122(a); 47 U.S.C. § 338. A satellite carrier provides “local-into-local” satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

<sup>3</sup> Under Section 76.66(m)(3) of the Commission’s rules, a local television broadcast station that disputes a response by a satellite carrier that it is in compliance with its must carry obligations may obtain review of such denial or response by filing a “complaint” with the Commission in accordance with Section 76.7. See 47 C.F.R. § 76.66(m)(3). Although styled a “complaint”, a carriage complaint filed against a satellite carrier is treated by the Commission as a petition for special relief for purposes of the Commission’s pleading requirements. See *1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999). Responsive pleadings filed in this context, therefore, must comply with the requirements set forth in Section 76.7(b)(1).

## II. LEGAL BACKGROUND

2. Section 338 of the Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (SHVIA),<sup>4</sup> required satellite carriers, beginning January 1, 2002, to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>5</sup> A station's market for satellite carriage purposes is its DMA, as defined by Nielsen Media Research.<sup>6</sup> In November 2000, the Commission adopted rules to implement the provisions contained in Section 338.<sup>7</sup>

3. Under the Commission's broadcast signal carriage rules, each satellite carrier providing local-into-local service pursuant to the statutory copyright license is generally obligated to carry any qualified local television station in the particular DMA that made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA.<sup>8</sup> In DMAs where a satellite carrier launches new local-into-local service, the carrier must notify local television stations in writing of its intent to provide such service at least 60 days in advance and identify the location of its local receive facility.<sup>9</sup> Upon receipt of this notice, local television stations must request carriage within 30 days.<sup>10</sup> If a satellite carrier denies a local station's carriage request, it must notify the station within 30 days of its receipt of the carriage request.<sup>11</sup> Otherwise, local television stations must be carried by the later of 90 days from the satellite carrier's receipt of the station's election request or upon commencing local-into-local service in the new television market.<sup>12</sup>

## III. DISCUSSION

4. Entravision's complaint sets forth the following facts that EchoStar does not dispute. On November 18, 2002, EchoStar sent notice that it intended to begin local-into-local service in the Monterey-Salinas DMA to KSMS-TV at the station's office in Monterey and certified mail receipts show that a station employee signed for the notice correspondence on November 22, 2002.<sup>13</sup> EchoStar's Notice

<sup>4</sup> See Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (Nov. 29, 1999).

<sup>5</sup> See 47 U.S.C. § 338.

<sup>6</sup> A DMA is a geographic area that describes each television market exclusive of others, based on measured viewing patterns. See 17 U.S.C. § 122(j)(2)(A)-(C); see also *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, 1934 (2000) ("DBS Broadcast Carriage Report & Order"); 47 C.F.R. § 76.66(e) ("A local market in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and [i]n the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) [i]n the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.").

<sup>7</sup> See generally *DBS Broadcast Carriage Report & Order*, 16 FCC Rcd at 1918. The Commission later affirmed and clarified its carriage rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999; Broadcast Signal Carriage Issues*, 16 FCC Rcd 16544 (2001) ("DBS Broadcast Carriage Reconsideration Order").

<sup>8</sup> See 47 C.F.R. § 76.66.

<sup>9</sup> See 47 C.F.R. § 76.66(d)(2); see also *DBS Broadcast Carriage Report & Order*, 16 FCC Rcd at 1933.

<sup>10</sup> See 47 C.F.R. § 76.66(d)(2).

<sup>11</sup> *Id.*

<sup>12</sup> See 47 C.F.R. § 76.66(d)(2)(iii); see also *DBS Broadcast Carriage Reconsideration Order*, 16 FCC Rcd at 16577.

<sup>13</sup> Complaint at 1 and Exhibit C.

designated a local receive facility.<sup>14</sup> On April 14, 2003, an executive with Entravision's parent company sent a must-carry election to EchoStar on behalf of KSMS that was rejected by EchoStar.<sup>15</sup> EchoStar stated that it rejected that election because it was not received within 30 days of the date its Notice was received by the station as required by Commission rules.<sup>16</sup>

5. Entravision argues that EchoStar sent the Notice to the wrong address and thus it was defective. It asserts that the proper address to serve the station was that of Entravision's headquarters in Santa Monica, California.<sup>17</sup> In support of its position, Entravision offers the fact that the Commission's web site lists the Santa Monica address for station KSMS-TV. It asserts that the Media Bureau has held that delivery to an address other than "an official address" will only be deemed reasonable under a narrow set of circumstances as explained in *Ho'Ana'Auao Community TV, Inc. v Echostar Communications Corporation* ("Ho'Ana'Auao").<sup>18</sup> Entravision asserts that the narrow circumstances in *Ho'Ana'Auao* do not exist in this case.<sup>19</sup> Entravision states that it administers its must-carry activities through its headquarters in Santa Monica and through outside counsel in Washington D.C. It further states that correspondence between Entravision and EchoStar regarding satellite carriage "has traditionally flowed in and out of" the Santa Monica office. According to Entravision, the only correspondence sent to EchoStar by an Entravision station or station employee was with respect to signal quality and local station facilities. Entravision states that its Santa Monica address is listed on its filings with the Commission.<sup>20</sup> Entravision also argues that EchoStar should have addressed the Notice to a specific station employee, namely the station manager by name, and should have made it clear on the face of the Notice that legal obligations involving Section 76.66 were implicated.<sup>21</sup>

6. In response to the Complaint, EchoStar contends that the Commission's rules do not specify to what address an Election Notice must be sent. EchoStar disagrees that the Bureau's decision in *Ho'Ana'Auao* establishes a policy that DBS providers must serve the corporate headquarters of a station's licensee.<sup>22</sup> EchoStar further states that when it received the signed certified mail receipt from the station, it reasonably thought that it met its notification burden and that the burden had shifted to the station to respond.<sup>23</sup> Echostar states that the station's address was listed in other media related sources and gives as an example the TV & Cable Fact Book.<sup>24</sup> EchoStar argues that the rules do not require that it indicate the importance of an Election Notice nor is it required that any particular employee be named in the address.<sup>25</sup> EchoStar notes that the station did not respond to the Notice until 150 days after receipt at the

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<sup>14</sup> *Id.* at Exhibit A.

<sup>15</sup> *Id.* at 1-2.

<sup>16</sup> *Id.* at Exhibit C.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> 18 FCC Rcd 2487 (2003).

<sup>19</sup> Complaint at 3.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> *Id.*

<sup>22</sup> Opposition at 6-7.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> Opposition at 3, n.13 and 6.

station's address and 53 days after the launch of local into-local service.<sup>26</sup>

7. We find that EchoStar acted reasonably in assuming it had fulfilled its must carry notice obligations when it served the station at its Monterey address and received a return receipt of acceptance. We disagree with Entravision that our decision in *Ho'Ana'Auao* established an "official address" policy for purposes of DBS must carry election notice. In fact, that case establishes the opposite. As the Bureau stated: "Section 76.66(d)(2) calls for satellite carriers to 'notify local television stations of [their] intent to provide local-into-local service' at least 60 days in advance and to identify the location of their local receive facility, but does not specify the location where such notice must be directed."<sup>27</sup> The Bureau continued by examining the particular circumstances presented and found that in the *Ho'Ana'Auao* case, EchoStar acted reasonably in sending the election notice to the station's corporate headquarters.<sup>28</sup>

8. In the instant case, it is undisputed that EchoStar sent its notice to the station's Monterey address and it received a return certified mail receipt that the notice was accepted by an employee of the station at that address. Under these particular circumstances, it was reasonable for EchoStar to assume that it had fulfilled its notice obligations. Our decision might be different if the notice had not been accepted by a station employee or if there was other evidence that service was not complete. Further, EchoStar has no obligation under our rules to address its election notice to any named employee or to mark the notice as having legal implications. Because the station responded more than 30 days after receiving notice that EchoStar intended to launch local-into-local service, its must carry election was untimely under Section 76.66(d)(2).

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 338(f) of the Communications Act, as amended, 47 U.S.C. § 338(f), and Section 76.66 of the Commission's rules, 47 C.F.R. § 76.66, that the mandatory carriage complaint filed by Entravision **IS DENIED**.

10. This action is taken by the Deputy Chief, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

<sup>26</sup> Opposition at 8. Entravision references negotiations between the parties to resolve this matter that delayed the station's response but there is no further information about these negotiations in the record. Entravision Reply at 7 n. 3.

<sup>27</sup> *Ho'Ana'Auao*, 18 FCC Rcd at 2489.

<sup>28</sup> *Id.*